

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6172 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

EXECUTIVE ENGINEER

Versus

GHANSHYAMSINH C VAGHELA

Appearance:

MR PJ PATEL for Petitioner

MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 14/02/97

ORAL JUDGEMENT

The respondent workman was appointed in March 1982. His service was terminated orally in March, 1987. The respondent was working as road-roller driver. The Labour Court decided the reference (LCN) No.62/88 upon industrial dispute raised by the respondent against the petitioner. The reference was accepted by the Labour Court by its award dated 11.12.95 whereby the petitioner

Panchayat is directed to reinstate the respondent workman in service with full backwages and continuity of service, which is directly under challenge in this petition.

The first contention which has been advanced before this Court by the learned advocate for the petitioner is that the workman had left the job without informing the master and there was no termination as such. This submission is reiterated before this Court. It was, rightly, rejected by the Labour Court in the light of the facts and circumstances and evidence on record. There was no reason for the workman to leave the service and then move the Court for legal redressal. The contention raised by the petitioner Panchayat that the workman had given up the service is not sustainable. On the contrary, the findings of the Labour Court that the petitioner Panchayat had illegally terminated the service of the respondent workmen is found quite justified. The facts and circumstances emerging from the record of the present case are properly and correctly examined and appreciated by the Labour Court while reaching to the finding of fact that there was illegal termination of service and not abandonment of it. This finding of fact has remained unshakable. The ratio propounded by this Court in a Division Bench decision in *M.P.Ramanandi vs. Gujarat State Warehousing Corporation*, 1985(2) GLR 1040 is directly attracted to the facts and circumstances of the present case. This case is squarely covered by the said decision.

The second contention raised on behalf of the petitioner Panchayat with regard to the award of 100 per cent backwages appears to be partly acceptable and justified. It is true that ordinarily the discretion exercised by the Labour Court in awarding backwages with or without the order of reinstatement may not be interfered with in a writ petition as the Labour Court has wide discretionary power under section 11-A of the Industrial Disputes Act, 1947 (ID Act). However, the exercise of this power must be judicious and just bearing in mind all the relevant facts and circumstances emerging from the record of the given case. It appears that the Labour Court has failed to consider that the backwages to the extent of 100 per cent awarded to the workman are in relation to a period of more than eight years. Since backwages are for a longer period and considering the relevant proposition of law, the ends of justice will be satisfied if the award of backwages is modified and the workman is awarded 70 per cent backwages instead of 100 per cent. Therefore, the respondent workman shall be

entitled to only 70 per cent backwages. The order of reinstatement is confirmed. In so far as the question of amount of cost is concerned, the office is directed to pay an amount of Rs.2,000/- to the respondent workman by an account payee cheque.

Since the respondent workman is awarded backwages for a long period, it would be expedient to direct the workman to deposit substantial part of arrears of wages in a better and prudent security. Obviously, the respondent workman who is belonging to labour class may not be able to exercise the fiscal discipline for the better utilisation of huge arrears of backwages.

The petitioner is directed to reinstate the respondent workman as early as possible but not later than two weeks from today and is further directed to pay the amount of backwages as aforesaid early but not later than four weeks.

In view of the aforesaid facts and circumstances narrated hereinbefore, the petition is partly allowed. Rule is made absolute to the aforesaid extent with the aforesaid direction of cost.

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